UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:24-cv-97-FDW

TYREE RHINEHARDT,)	
Plaintiff,)	
)	
VS.)	
D.F. MOORE, et al.,	ORDE	R
Defendants.)	
)	

THIS MATTER is before the Court sua sponte.

The pro se Plaintiff, proceeding *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983 while he was a pretrial detainee at the Catawba County Detention Center ("CCDC"). [Doc. 1]. At the commencement of this action, the Plaintiff was instructed that he must keep the Court apprised of his current address at all times by promptly filing a "Notice of Change of Address" with the Court, and that the failure to do so may result in this case's dismissal for lack of prosecution. [See Standing Order of Instructions].

On September 19, 2024, the Complaint was dismissed on initial review and the Court granted the Plaintiff 30 days within which to amend. [Doc. 12]. At that time, the Plaintiff's address of record was at an apartment in Hickory, North Carolina. [See Doc. 9].

The Plaintiff sought an extension of time in which to amend. [Doc. 13]. On November 5, 2024, the Court entered an order granting the Plaintiff an additional 30 days in which to amend the Complaint.¹ [Doc. 15]. The Court noted that, although the Plaintiff's address of record remained

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¹ The Court also forwarded the Motion to the Fourth Circuit Court of Appeals in an abundance of caution, as it appeared that the Plaintiff was also seeking review of the Order on initial review. The Fourth Circuit dismissed the appeal on January 13, 2025 for lack of prosecution, Case No. 24-7056. [See Doc. 19].

at an apartment in Hickory, it appeared that he may have actually been incarcerated at CCDC. He was again cautioned that "he is required to keep the Court apprised of his correct address at all times" and that "the failure to do so may result in this action's dismissal." [Id. at fn. 1, 2]. The Court instructed the Clerk to mail the Plaintiff copies of the Order at his address of record in Hickory and to him at the CCDC. [Id.].

On November 18, 2024, the mail to Plaintiff at CCDC was returned as undeliverable and, on November 20, 2024, the Court re-mailed it with a corrected address. [See Doc. 18]. On December 13, 2024, the Clerk mailed a copy of the November 5 Order to the Plaintiff at the Foothills Correctional Institution because it appeared from the North Carolina Department of Adult Corrections' ("NCDAC") website that the Plaintiff was incarcerated there at that time. The Plaintiff was ordered to update his address with the Court within 14 days; he was cautioned that the failure to do so may result in the dismissal of this action without prejudice. [Dec. 13, 2024 Notice].

The Plaintiff has not amended his Complaint or updated his address with the Court and the time to do so has expired. It appears that he has abandoned this action and the Court is unable to proceed. Accordingly, this action is dismissed without prejudice. See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for sua sponte dismissal, Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

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² The NCDAC's website now reflects that the Plaintiff is incarcerated at the Johnson CI. <u>See https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=1351174&searchLastName=rhinehardt&searchFirstName=tyree&searchDOBRange=0&listurl=pagelistoffendersearchresults&listpage=1 (last accessed Jan. 21, 2025); Fed. R. Ev. 201.</u>

IT IS, THEREFORE, ORDERED that this action is **DISMISSED WITHOUT** PREJUDICE.

The Clerk is respectfully instructed to note that the Plaintiff's NCDAC inmate number is 1351174, and to mail him a copy of this Order at his address of record and to him at the Johnston Correctional Institution.

IT IS SO ORDERED.

Signed: January 23, 2025

Frank D. Whitney

Senior United States District Judge